

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 02, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARK ANTHONY LANDA,  
  
Petitioner,  
  
v.  
  
STATE OF WASHINGTON,  
  
Respondent.

No. 2:21-cv-00018-SMJ

**ORDER SUMMARILY  
DISMISSING HABEAS CORPUS  
PETITION**

Petitioner Mark Anthony Landa, a prisoner housed at the Coyote Ridge Corrections Center, filed a *pro se* application for a writ of habeas corpus by a person in State custody under 28 U.S.C. § 2254. ECF No. 1. He paid the \$5.00 filing fee. Having reviewed the petition and the record in this matter, the Court is fully informed and dismisses the petition because of several deficiencies summarized below.

**PROPER RESPONDENT**

The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where

1 the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 893 (9th  
2 Cir. 1996). Therefore, Jeffrey Uttecht is the only proper Respondent to this action.

### 3 EXHAUSTION REQUIREMENT

4 Petitioner challenges his 2015 guilty plea to unspecified charges in Okanogan  
5 County, Washington. ECF No. 1 at 1. He was sentenced to 198 months  
6 incarceration. *Id.* Petitioner invites the Court to “see case file” but provides no case  
7 file. *Id.* He did not appeal his conviction or seek any other form of state collateral  
8 review. *Id.* at 2–3.

9 Before a federal court may grant habeas corpus relief to a state prisoner, the  
10 prisoner must exhaust the state court remedies available to him. 28 U.S.C. §  
11 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
12 a prisoner give the state courts an opportunity to act on his claims before he presents  
13 those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838 (1999). A  
14 petitioner has not exhausted a claim for relief if they have a right under state law to  
15 raise the claim by an available procedure. *See id.*; 28 U.S.C. § 2254(c).

16 To meet the exhaustion requirement, the petitioner must have “fairly  
17 present[ed] his claim in each appropriate state court (including a state supreme court  
18 with powers of discretionary review), thereby alerting that court to the federal  
19 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S.  
20 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by

1 describing the factual or legal bases for that claim and by alerting the state court “to  
2 the fact that the . . . [petitioner is] asserting claims under the United States  
3 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249 F.3d  
4 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in a state court and  
5 a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513 U.S. at 365–  
6 66.

7 Furthermore, to fairly present a claim, the petitioner “must give the state  
8 courts one full opportunity to resolve any constitutional issues by invoking one  
9 complete round of the State’s established appellate review process.” *O’Sullivan*,  
10 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
11 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
12 (1971). It appears from the face of the petition and the attached documents that  
13 Petitioner has not exhausted his state court remedies as to each of his grounds for  
14 relief. *See* ECF No. 1.

### 15 **GROUND FOR FEDERAL HABEAS CORPUS RELIEF**

16 Throughout the petition, Petitioner invites the Court to “see” his numbered  
17 attachments, A-1 to A-25. *Id.* at 5–14. In his grounds for federal habeas relief,  
18 Petitioner argues the State of Washington has no jurisdiction to decide federal  
19 constitutional matters. *Id.* at 17–19.

20 It has long been settled that state courts are competent to decide questions

1 arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898)  
2 (“It is the duty of the state court, as much as it is that of the federal courts, when the  
3 question of the validity of a state statute is necessarily involved, as being in alleged  
4 violation of any provision of the federal constitution, to decide that question, and to  
5 hold the law void if it violate that instrument.”); *see also Worldwide Church of God*  
6 *v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as  
7 competent as federal courts to decide federal constitutional matters). Petitioner’s  
8 arguments to the contrary are meritless.

9       Petitioner also asserts that the Washington State Constitution contradicts the  
10 U.S. Constitution regarding the Fifth Amendment right to “presentment or  
11 indictment of a Grand Jury.” ECF No. 1 at 17. He claims “no bill of indictment”  
12 was brought against him, rendering his arrest, conviction, and imprisonment illegal.  
13 *Id.* Petitioner seems to argue that because the state courts have allegedly defied  
14 “federally established procedures and processes for the adjudication of crimes,”  
15 only “a court of federal jurisdiction” has jurisdiction over his claims. *Id.*

16       The U.S. Supreme Court has long recognized that, “[p]rosecution by  
17 information instead of by indictment is provided for by the laws of Washington.  
18 This is not a violation of the Federal Constitution.” *See Gaines v. Washington*, 277  
19 U.S. 81, 86 (1928). There is no federal constitutional violation when a prosecuting  
20 attorney’s criminal information is substituted for the grand jury’s indictment. *See*

1 *Hurtado v. California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment  
2 is essential to due process of law and that a state violates the Fourteenth Amendment  
3 by prosecuting a defendant with a criminal information). Petitioner's assertions to  
4 the contrary are legally frivolous.

5 Because it plainly appears from the petition and accompanying documents  
6 that Petitioner is not entitled to relief in this Court, **IT IS HEREBY ORDERED:**

- 7 **1.** The petition, **ECF No. 1**, is **DISMISSED** under Rule 4 of the Rules  
8 Governing Section 2254 Cases in the United States District Courts.
- 9 **2.** All pending motions are **DENIED AS MOOT**.
- 10 **3.** The Clerk's Office is directed to **ENTER JUDGMENT**.
- 11 **4.** The Clerk's Office is directed to **CLOSE** this file.

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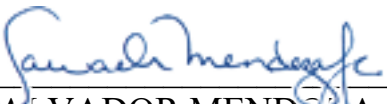
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1           **5.**     The Court certifies that, under 28 U.S.C. § 1915(a)(3), an appeal from  
2           this decision could not be taken in good faith and there is no basis upon  
3           which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c);  
4           Fed. R. App. P. 22(b). A certificate of appealability is therefore  
5           **DENIED.**

6           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
7           provide copies to Petitioner.

8           **DATED** this 2<sup>nd</sup> day of March 2021.

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11          SALVADOR MENDOZA, JR.  
12          United States District Judge  
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